

Qualification Disciplinary Commission of Prosecutors: brief analysis of decisions of the body that considers disciplinary case against SAPO Head Kholodnytskyi

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Following conversations, tapped in the office of the Head of the Specialized Anticorruption Prosecutor's Office Nazar Kholodnytskyi, both NABU director Artem Sytnyk and the Prosecutor General Yuriy Lutsenko submitted disciplinary complaints against Kholodnytskyi to the Qualification Disciplinary Commission of Prosecutors (QDCP).

This body has the authority to impose disciplinary sanctions on the prosecutors for violation of ethical and professional standards. Sanctions may range from reprimand to dismissal from office. Two subsequent reprimands also lead to dismissal.

Below is a brief analysis of common practice of the QDCP in disciplinary cases against prosecutors. The analysis shows signs of selective and non-consistent approach of the Commission to disciplinary offences. The Commission tends both to ignore graft violations and sanction prosecutors on questionable grounds. Moreover, some decisions of the Commission seem to have political context reflecting political affiliations of its members.

In March 2018 the QDCP [issued](#) a reprimand to the SAPO prosecutor Perov for slamming the door after judicial hearing in a case related to former Narodnyi Front MP Mykola Martynenko. Decision of the Commission was fully based on complaints of the defence attorneys of Martynenko: the judge did not file any complaints, while the secretary of the hearing informed of not having heard any slamming. Moreover, the case was presented by the Commission member Shemchuk, who used to be an MP in a faction led by Martynenko; according to journalistic [investigation](#), Shemchuk was in a conflict of interests in this disciplinary case.

However, back in November 2017 the QDCP [closed](#) the case against the prosecutor, who publicly called a judge "separatist and dumbass" after the latter rescheduled a hearing. The complaint was filed by the judge himself, while the prosecutor denied the incident. The Commission did not sanction the prosecutor because allegedly it had no evidence other than judge's appeal. This approach contradicts the one used in Perov's case, where the prosecutor was sanctioned upon the only complaint coming from defence attorneys.

The QDCP systematically fails to sanction prosecutors allegedly involved in bribing and/or illicit enrichment, although the Commission has powers to dismiss such people as those with tainted reputation even before the guilty verdict of the court.

In February 2018 the Commission [closed](#) disciplinary case against former military prosecutor Kulyk, accused in illicit enrichment. The QDCJ based its decision on the results of polygraph examination, that

allegedly confirmed Kulyk saying truth on not having taken any bribes (although illicit enrichment comes not only from bribes, but from many other sources). Therefore, the Commission prioritized results of the polygraph examination, held upon Kulyk's initiative without QDCJ's supervision, over evidences provided by NABU detectives, including wiretapping of Kulyk's conversations.

In January 2018 the Commission [refused](#) to dismiss the prosecutor, who was twice caught red-handed demanding bribes. As in previous case, the QDCJ questioned results of wiretapping that clearly showed prosecutor Yaroslav Gulyi demanding bribes of USD 5,000 and USD 25,000 for not bringing people to criminal liability and for releasing their property from arrest. On the contrary, also in January 2018 the Commission [decided](#) to dismiss deputy head of local prosecutor's office for demanding bribes under very similar circumstances.